

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN LAVON GILES,

Plaintiff,

v.

Case No. 2:23-cv-10951

District Judge Jonathan J.C. Grey

Magistrate Judge Kimberly G. Altman

JONATHAN HEMINGWAY,
HOUSE, TOFUIL, and N.
CLINGERMAN,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S MOTION TO AMEND THE COMPLAINT (ECF No. 56)**

I. Introduction

This is a prisoner civil rights case. Plaintiff Kevin Giles (Giles), proceeding *pro se* and *in forma pauperis*, filed a complaint naming Warden Jonathan Hemingway (Hemingway), Officer House, Officer Tofuil, and N. Clingerman as defendants. (ECF No. 1). He asserts claims under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) for violations of his Eighth and Fourteenth Amendment rights while housed at the federal correctional institution in Milan, Michigan as a pretrial detainee. (*Id.*; ECF No. 14). Under 28 U.S.C. § 636(b)(1), all pretrial matters have been referred to the undersigned. (ECF No. 16).

Before the Court is Hemingway’s motion to strike Giles’s motion to amend the complaint.¹ (ECF No. 56). Both motions were filed on April 18, 2024. For the reasons that follow, Hemingway’s motion will be GRANTED. Giles’s motion to amend, (ECF No. 52), will be STRICKEN. If Giles wishes to amend his complaint, he must file another motion for leave to amend, stating the reasons why he should be permitted to do so. Importantly, Giles **must attach the proposed amended complaint to the motion and may not incorporate any prior complaint by reference.** *See* E.D. Mich. Local Rule 15.1.

II. Discussion

On April 18, 2024, Giles filed a motion to amend the complaint. (ECF No. 52). He sought to add two John Doe defendants: the “new warden of FCI Milan” and the “new captain of FCI Milan.” (*Id.*). He did not state why he sought to add the new defendants or propose new claims against them. Further, he did not attach a copy of the proposed amended complaint to his motion as required by Local Rule 15.1.

The day Giles’ motion was docketed, Hemingway moved to strike it for Giles’ failure to include the proposed amended complaint. Without the ability to review this document, Hemingway says he “cannot adequately address whether the

¹ There are a number of other motions pending in this case that will be resolved by future Orders or Reports and Recommendations. *See* ECF Nos. 22, 31, 41, 49, 53, 54, 57.

contemplated amendment would be futile, justifying denial of leave to amend[.]” (ECF No. 56, PageID.320).

Local Rule 15.1 states that “[f]ailure to comply with this Rule is not grounds for denial of the motion.” Nevertheless, courts have stricken plaintiffs’ motions to amend their complaints for failing to include proposed amended complaints. *See Kowaleski v. Werner Co. (DE)*, No. 20-10056, 2021 WL 2258424, at *1 n.1 (E.D. Mich. June 3, 2021); *Jeffrey v. Royal Oak Police Dep’t*, No. 10-10463, 2011 WL 3849417, at *3 (E.D. Mich. July 27, 2011), *report and recommendation adopted*, 2011 WL 3799775 (E.D. Mich. Aug. 26, 2011).

Here, Giles has not only failed to attach a copy of the proposed amended complaint; he has also failed to describe why he seeks to add the John Doe defendants to the case in his motion. Thus, as Hemingway suggests, the Court is unable to assess whether the motion should be granted. Giles’ motion shall be stricken.

III. Conclusion

For the reasons stated above, Hemingway’s motion, (ECF No. 56), is GRANTED, and Giles’s motion to amend, (ECF No. 52), is STRICKEN. If Giles wishes to amend his complaint, he must move for leave to amend and state the reasons why he should be permitted to do so. Additionally, Giles **must attach the proposed amended complaint to the motion and may not incorporate any**

prior complaint by reference. *See* E.D. Mich. Local Rule 15.1.

Finally, Giles is on notice that if he does not file a proper motion for leave to amend as described above, the motion may be denied or stricken.

SO ORDERED.

Dated: April 19, 2024
Detroit, Michigan

s/Kimberly G. Altman
KIMBERLY G. ALTMAN
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 19, 2024.

s/Carolyn Ciesla
CAROLYN CIESLA
Case Manager